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IN THE

Supreme Court of the United States

OCTOBER TERM—1924.

No. ~~472.~~ 107

THE ALEXANDER MILBURN COMPANY,
Petitioner,

vs.

DAVIS-BOURNONVILLE COMPANY,
Respondent.

REPLY TO BRIEF FOR RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

JAMES A. WATSON,
Solicitor for Petitioner.

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The brief for respondent is evidently intended to create the impression that the issue involved in the petition for certiorari is simply one of interference between two rival inventors who worked upon the same problem in the same shop. The whole tenor of the brief is misleading and beside the issue and not supported by the record.

There is no evidence that Clifford and Whitford worked in the same shop or knew anything of each other's work or were even acquainted with each other. The only witness on this subject was Brandenberg (record, pages 144, 145), who said, referring to his visit to the plaintiff's shop at the time he

prepared the Whitford application, that Clifford "was an employee about that time or a little earlier" (Q. 9). He said on cross-examination "I don't remember whether Mr. Clifford was there at that time" (X-Q. 11).

The fact that Clifford employed another attorney and did not assign his invention to the Davis-Bournonville Company indicates that his inventive work was done elsewhere and not in the interests of the company.

The statement in the respondent's brief (page 5) that "the fact is that the two patentees worked together side by side under the same roof and on the same problem" is not supported by a scrap of evidence and is highly improbable.

There is no question of interference involved. It is immaterial whether what was disclosed in the earlier Clifford application was invented by Clifford, or whether he obtained knowledge of it from some outside source. He disclosed it in his application and filed his application before the earliest date that can be credited to Whitford. The question is: Was Whitford the first inventor regardless of the earlier disclosure in the Clifford application? The Court below said that he was. Under the authority of Lemley vs. Dobson-Evans Company, 243 F. R. 391, 395, C. C. A., Sixth Circuit, and many other cases in that Circuit running back about thirty years, Whitford was not the first inventor.

We submit that the petition for certiorari should be granted.

Respectfully submitted,

JAMES A. WATSON,
Solicitor for Petitioner.

Washington, D. C.,
October 4, 1924.